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The Start-up Bill 2021: Fostering a culture of innovative thinking and entrepreneurship for start-ups

According to the StartupBlink Ecosystem Index 2021 Report, a global start-up ecosystem map, Kenya ranked 61 globally, first in Eastern Africa and second in Africa, making it among the top five most developed start-up ecosystems in Africa.

Kenya is home to thousands of start-ups attracting billions of shillings annually from international investors. Entrepreneurs are building solutions for their communities and there are several training and funding opportunities available to these start-ups from various venture capitalists and private equity investors. Most of the start-ups receiving these funding opportunities are in the technology sector, including Agtech, FinTech and Healthtech. These opportunities make the Kenyan start-up ecosystem very robust compared to other developing countries. The launch of the Association of Start-up and SME Enablers of Kenya (ASSEK), an association established in 2019 to represent the interests of entities supporting the development and growth of start-ups, has opened new opportunities for collaboration, skills development and funding. Kenya's Vision 2030 and other technological policies have provided a conducive environment for innovation in Kenya.

The Constitution of Kenya, 2010 under articles 11(2)(b) and (c) recognises the role of science and indigenous technologies and the promotion of intellectual property in the development of the nation. It is in this vein that the Start-up Bill 2021 (Bill) was passed by the Senate in 2021. The Bill's first reading before the National Assembly was done on 2 February 2022 and it is currently awaiting the second reading stage. The Bill seeks to provide a legislative framework that fosters a culture of innovative thinking and entrepreneurship; that facilitates investment in the provision of fiscal and non-fiscal support to start-ups in Kenya; for the registration of start-ups and the linkage of such start-ups with financial institutions; for the establishment of incubation facilities; and that promotes an enabling environment for the establishment, development and regulation of start-ups.

The Bill provides for the role of national and county governments concerning start-ups to include,

among other things, promoting innovation; facilitating the transfer of technology innovation; promoting the creation of employment and wealth; and promoting the linkages between universities and research institutions and the business community. The Bill also mandates national and county governments to put incubation policies in place for the development of business incubation and start-up systems.

QUALIFYING ENTITIES

Under the Bill, the Kenya National Innovation Agency, established under Section 28 of the Science, Technology and Innovation Act, is responsible for registering start-ups. The Bill, when passed, will apply to entities that are:

- newly registered or that have been in existence for a period of not more than seven years from the date of their incorporation/registration and, in the case of start-ups in the biotechnology sector, the period shall be up to 10 years from the date of its incorporation/registration;

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- have as their objectives the innovation, development, production or improvement and commercialisation of innovative products, processes or services;
- at least one-third owned by one or more citizens of Kenya; and
- currently spending (or can attribute) at least 15% of their expenses to research and development activities.

The Bill will not apply to an entity that is established as a result of reconstruction, merger or reconstitution of an existing business or a holding company or subsidiary of an existing business that is not registered as a start-up.

Incubators registered under the Bill must be entities led by persons of recognised competence and have regular collaborative relationships with universities, centres of research, public institutions and financial partners that are experienced in supporting innovative start-ups. The Bill obligates incubators to raise capital and prepare marketing

for start-ups, support novice technological entrepreneurs and have viable research and development plans and expertise.

The Bill provides that start-ups registered under it shall benefit from subsidised formalisation; the protection of intellectual property of innovations; fiscal and non-fiscal support; a credit guarantee scheme; and support in the form of research and development activities as incentives for start-ups in Kenya.

LIMITATIONS OF CURRENT ELIGIBILITY CRITERIA

Although the Bill has noble objectives, some considerations may need to be taken into account before the Bill is enacted. For example, among other qualifications, the eligibility criteria for admission of start-ups into the incubation programme under the Bill include the requirement that the applicant is a holder, depositary or licensee of a registered patent or the owner and author of registered software concerning their start-up business. The registration of such intellectual property is not cheap and most start-ups with viable

industry-disrupting ideas may not be eligible to participate, simply because they are unable to foot the cost of registration of a patent.

In addition, while the Bill intends to encourage innovation in Kenya, the set eligibility criteria are open to many types of entities whose business models may not suit the stated aims of the Bill in the long term. For example, those that do not show innovativeness and are not tech-based, since technology is a major driver of economic growth. It may be advisable to establish a preselection process whereby applicants are filtered to ensure that only innovative tech and research-based start-ups with viable business models proceed to the incubation programme. Finally, it may be advisable for there to be recourse to a judicial authority (such as the right to appeal to High Court or a tribunal) to check the actions of the administrative offices and the decision not necessarily left only to the Cabinet Secretary.

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APPROACHES IN THE REST OF AFRICA

In Africa, Tunisia and Senegal have appreciated the potential of start-ups to support rapid social-economic development and have already enacted laws to recognise and support start-up activities in their jurisdictions. Tunisian legislation outlines which businesses qualify as start-ups and has created a system for such businesses to be recognised by the Government. Those that qualify can receive government grants and corporate tax exemptions. Founders can even have their salaries covered in the first year the business is in operation. In Senegal, the Government is still in the process of implementing the legislation on start-ups. Other African countries considering the enactment of similar laws include South Africa, Ghana, the Democratic Republic of Congo, Rwanda and Mali. While the essence of the wave to enact the start-up

laws is to foster innovativeness and creativity, the start-up laws will also ensure the retention of the wealth created by African tech entities within Africa.

The continued robust investment in internet infrastructure, education and digital literacy will in general spur innovation across Africa. Notably, most African start-ups are closely related to the development sector, and it is high time we challenged our innovators to diversify into other industries. The start-up laws have been tailored to address the major issues, especially the neglect of nascent entrepreneurs. It is promising to see that more and more African countries are recognising that local start-ups have a high capacity for quality job creation and are increasingly playing a pivotal role in socio-economic development through innovation and aiding the optimisation of current economic sectors.

In conclusion, Kenya is making notable strides in its innovation journey, and it is quite clear that national legislations that create clear frameworks and operational support for start-ups are one of the best ways to help Africa's start-ups thrive and improve the ecosystem. The deliberate enactment of laws that foster entrepreneurship and various policy interventions, leadership in government with an appetite for risk, and collaboration with the private sector will spur economic growth and create employment opportunities for the Kenyan population.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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